IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.101 OF 2005

Nivruti Dattatraya Bhopale ...Appellant

Vs.

Sakharam Narayan Bhopale ...Respondent

Mr. Amit Borkar for the Appellant
Mr. P.D.Dalvi for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 30,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by the original Defendant. The Advocate for the Respondent states that the Respondent does not desire to challenge the Judgment and Decree passed by the Appellate Court.

2. The decree passed by the Appellate Court against the Appellant reads thus :

"The Defendant is hereby perpetually restrained from causing any obstruction to the drainage which is situated to the south side of City Survey No.511 and 512 by himself, his agents, servants, legal heirs etc.."

3. The decree itself is very clear. The decree relates to the drainage which is situated on the southern side of City Survey No.511 and 512. City Survey No.512 is the property of the Appellant.

4. Shri Borkar,learned Counsel for the Appellant submitted that the drainage is passing through the property of the Appellant. He submitted that unless right of easement is established by the Respondent-Plaintiff in respect of the suit property, the decree could not have been passed.

5. In paragraph No.13 of its Judgment, the Appellate Court has recorded the following finding :

"13.... However, learned Civil Judge has wrongly refused the relief of perpetual injunction in respect of the drainage which is situated to the southern side of City Survey No.511 and 512..."

6. Thus, it is crystal clear that there is no finding recorded by the Appellate Court that the drainage passes through the property of the Appellant. From the operative part of the decree it is very clear that the drainage is situated on the southern side of the property of the Appellant. Thus there is no injunction granted in respect of the property of the Appellant.

7. No substantial question of law arises in the Second Appeal. Second Appeal is dismissed with no order as to costs.

Judge.